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**OFFICE OF PETITIONS**

In re Application of :  
Cannon et al. :  
Application Number: 09/924482 : ON PETITION  
Filing Date: 08/09/2001 :  
Attorney Docket Number: Cannon :  
125-113-73 :

This is a decision on the "PETITION TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT," which is treated as a petition under 37 CFR 1.181, filed on November 28, 2007.

This application became abandoned on November 6, 2004, for failure to timely file a response to the Office action requiring Restriction and/or Election mailed on October 5, 2004, which set a one (1) month shortened statutory period for reply. Notice of Abandonment was mailed on September 21, 2007.<sup>1</sup>

Petitioners assert that a response to the Office action requiring restriction and/or election was timely filed on December 3, 2004. In support, petitioners have presented a mail log purporting to show the date the reply to the restriction requirement was filed with the USPTO as well as a declaration from counsel's administrative assistant, Lamont King, as well as a copy of a return receipt intended to show that the reply to the restriction requirement was filed in the USPTO.

The U.S. Patent and Trademark Office (Office) file is the official record of the papers filed in this application. A review of the papers filed reveals that no response filed on December 3, 2004, to the Office action mailed on October 5, 2004, was ever received in the USPTO. An applicant alleging that a

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<sup>1</sup> Although no copy of the Notice of Abandonment is located in the USPTO's Image File Wrapper, petitioner states that the Notice of Abandonment has been received, and a review of the Office PALM records reveal that a Notice of Abandonment was mailed on September 21, 2007.

paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioners believe that the reply was (or should have been) timely received in the Office, is not more persuasive than the date the papers are shown to have been received in the official file.

As such, the mail log and affidavit serves as evidence only of what petitioner's *intended* to file on December 3, 2004, not of what was actually filed or received in the USPTO on that date.

In this regard, the "RETURN RECEIPT FROM PTO FOR INDICATED ITEMS" cannot serve as evidence of receipt in the USPTO of the Response to Restriction Requirement because the receipt has not been stamped by USPTO with the date of receipt of the item(s) listed thereon.

In accordance with MPEP 503, a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

It is therefore suggested that petitioners file a renewed petition, accompanied by a copy of the itemized receipt in compliance with MPEP 503, showing the "Office date" stamp from the USPTO.

Additionally, as no copy of the Notice of Abandonment is located in the official file, it is requested that petitioners submit a copy of the Notice of Abandonment with any renewed petition.

The petition is **DISMISSED**.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision. **This period may not be extended.**<sup>2</sup>

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<sup>2</sup> 37 CFR 1.181(f).

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
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                    Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



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Office of Petitions